(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Date: MAY 2 8 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. Counsel filed a motion to reopen and reconsider the AAO's decision. The AAO dismissed the motions and affirmed its initial decision. Counsel[1] filed a second motion to reopen and reconsider the AAO's decision. The second motion to reopen and reconsider will also be dismissed.

The petitioner describes itself as a low income housing tax credit property business. According to the petitioner's corporate documents, it is a limited partnership formed in 1998 between the

is a hotel for low-income residents. The beneficiary's position involves the administration and management of low income housing tax credits for the hotel.

The petitioner seeks to permanently employ the beneficiary in the United States as a tax credit administrator pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).[2]

As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor (DOL). The director's decision denying the petition concluded that the petitioner failed to submit evidence establishing that the beneficiary possessed the minimum level of education required by the terms of the labor certification, and failed to submit evidence establishing its ability to pay the proffered wage.[3]

The AAO's decisions dismissing the appeal and the subsequent motion conclude that the beneficiary's education does not meet the minimum requirements of the labor certification or the requested immigrant visa preference classification.

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[1] The petitioner terminated counsel's representation on December 17, 2012, after the filing of this second motion to reopen and reconsider. The record does not contain a Form G-28 for a new counsel.

[2] In pertinent part, section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

[3] The labor certification states that the offered position requires "6" years of college resulting in a "Master's or equivalent" degree in "Business Administration or relevant field." The labor certification also states that the offered position requires "familiarity with the compliance requirements of the Federal and Missouri State Low Income Housing Tax Credit Programs."

The brief in support of the petitioner's second motion contains two new professional evaluations of the beneficiary's educational credentials, which conclude that the beneficiary's three-year bachelor's degree from India and two two-year master's degrees from India are equivalent to two U.S. master's degrees. The brief states that the AAO is incorrect to follow the conclusions of AACRAO's Electronic Database for Global Education instead of the professional evaluations submitted by the petitioner.[4] The brief also states that the beneficiary's five years of post-baccalaureate experience is equivalent to a U.S. master's degree.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.[5]

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The motion to reopen will be dismissed because the newly submitted credentials evaluations do not constitute new evidence that was unavailable and could not have been presented in the previous proceeding.

The motion to reconsider is also dismissed, because the petitioner failed to support the motion with pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law or policy based on the record at the time of its initial decision.[6]

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[4] USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies. In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D. Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by EDGE. According to EDGE, a two-year master's degree from India following a three-year bachelor's degree from India represents attainment of a level of education comparable to a bachelor's degree in the United States. The evidence in the record does not establish that the educational requirements of the labor certification could be met by the foreign equivalent of two U.S. bachelor's degrees in two different fields of study.

[5] The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." *Webster's II New Riverside University Dictionary* 792 (1984)(emphasis in original).

[6] Even if the AAO reopened the proceedings and concluded that the beneficiary possessed the educational requirements of the offered position and the requested preference classification, the petition would not be approved. First, the record does not contain copies of the petitioner's

Therefore the motion will be denied for failing to meet applicable requirements.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reconsider and the motion to reopen are dismissed.

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corporate federal income tax returns, audited financial statements or annual reports for each year from the priority date as required by 8 C.F.R. § 204.5(g)(2). Second, the evidence in the record does not establish that the beneficiary possessed "familiarity with the compliance requirements of the Federal and Missouri State Low Income Housing Tax Credit Programs" prior to working in the offered position for the petitioner. This requirement is stated on the labor certification and was used to eliminate U.S. workers from consideration for the position. The AAO conducts appellate review on a *de novo* basis. The AAO's de novo authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).